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OCT 25 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JAMES FELTON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

) Case No. 7:04cv00737
)
)

) **MEMORANDUM OPINION & ORDER**
)

) By: Jackson L. Kiser
) Senior United States District Judge

This matter is before the court on James Felton's petition, which the court will construe as a motion for reconsideration of the September 23, 2005 order dismissing his motion to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255 as successive.

Court records indicate that Felton has previously filed three motions which collaterally attack the same conviction and/or sentence as the instant petition. See Civil Action No. 7:96cv00484, 7:97cv00260, and 7:98cv00416. Thus, the instant petition was a subsequent habeas petition, falling under the provisions of the recent amendments to federal habeas statutes regarding subsequent or successive motions. See Title I, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996). Petitioner was advised that, under these amendments, this court may consider a second or successive motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. As petitioner had not submitted any evidence of such certification by the Court of Appeals, his motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. §2255 was dismissed without prejudice.

In the instant motion, Felton seeks to have this court reconsider its September 23, 2005 order dismissing his petition as successive. Petitioner argues that under Castro v. United States of

America, 540 U.S. 375 (2003), this petition should not be deemed successive and should instead be addressed on the merits. Petitioner further argues that under Dodd v. United States, 125 S.Ct. 2478 (2005), as Castro recognized a new right, he had one year from the date the Castro decision was rendered to file a petition in this court raising a claim as to a violation of the rights afforded under Castro. As indicated in this court's previous Memorandum Opinion, the court found that even assuming petitioner had been denied the rights afforded under Castro, petitioner's instant motion for relief was still successive because of the 1998 petition. See Docket Entry 15. Thus, petitioner's argument is unavailing.

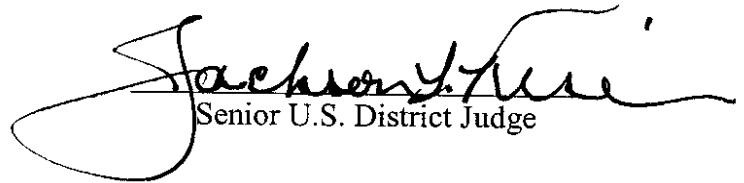
Inasmuch as petitioner does not present any new evidence to support his motion, and given that he presents no evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a successive § 2255 petition, it is hereby

ORDERED

that petitioner's motion for reconsideration shall be and hereby is **DENIED**.

The Clerk of the Court is directed to send a certified copy of this order to petitioner.

ENTER: This 28th day of October, 2005.


Senior U.S. District Judge